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(v) The procedures for and the timing of the governing body's periodic review of the risk monitoring and risk management written guidelines, systems, and processes;

(vi) The process for monitoring risk independent of the business or trading units whose activities create the risks being monitored;

(vii) The performance of the risk management function by persons independent from or senior to the business or trading units whose activities create the risks;

(viii) The authority and resources of the groups or persons performing the risk monitoring and risk management functions;

(ix) The appropriate response by management when internal risk management guidelines have been exceeded;

(x) The procedures to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

(xi) The procedures requiring the documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(xii) The procedures authorizing specified employees to commit the OTC derivatives dealer to particular types of transactions;

(xiii) The procedures to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a-1; and

(xiv) The procedures to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a-1(c) and § 240.15a-1(d), including the procedures to determine whether a counterparty is acting in the capacity of principal or agent.

(d) Management must periodically review, in accordance with written procedures, the OTC derivatives dealer's business activities for consistency with risk management guidelines including that:

(1) Risks arising from the OTC derivatives dealer's OTC derivatives activities are consistent with prescribed guidelines;

(2) Risk exposure guidelines for each business unit are appropriate for the business unit;

(3) The data necessary to conduct the risk monitoring and risk management function as well as the valuation process over the OTC derivatives dealer's portfolio of products is accessible on a timely basis and information systems are available to capture, monitor, analyze, and report relevant data;

(4) Procedures are in place to enable management to take action when internal risk management guidelines have been exceeded;

(5) Procedures are in place to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

(6) Procedures are in place to identify and address any deficiencies in the operating systems and to contain the extent of losses arising from unidentified deficiencies;

(7) Procedures are in place to authorize specified employees to commit the OTC derivatives dealer to particular types of transactions, to specify any quantitative limits on such authority, and to provide for the oversight of their exercise of such authority;

(8) Procedures are in place to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a-1;

(9) Procedures are in place to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a-1(c) and § 240.15a-1(d), including procedures to determine whether a counterparty is acting in the capacity of principal or agent;

(10) Procedures are in place to provide for adequate documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(11) Personnel resources with appropriate expertise are committed to implementing the risk monitoring and risk management systems and processes; and

(12) Procedures are in place for the periodic internal and external review of the risk monitoring and risk management functions.

[63 FR 59400, Nov. 3, 1998]

§ 240.15c3-5 Risk management controls for brokers or dealers with market access.

(a) For the purpose of this section:

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(1) The term *market access* shall mean:

(i) Access to trading in securities on an exchange or alternative trading system as a result of being a member or subscriber of the exchange or alternative trading system, respectively; or

(ii) Access to trading in securities on an alternative trading system provided by a broker-dealer operator of an alternative trading system to a non-broker-dealer.

(2) The term *regulatory requirements* shall mean all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.

(b) A broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Such broker or dealer shall preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with § 240.17a-4(e)(7). A broker-dealer that routes orders on behalf of an exchange or alternative trading system for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS (§ 242.611) for NMS stocks, or in compliance with a national market system plan for listed options, shall not be required to comply with this rule with regard to such routing services, except with regard to paragraph (c)(1)(ii) of this section.

(c) The risk management controls and supervisory procedures required by paragraph (b) of this section shall include the following elements:

(1) *Financial risk management controls and supervisory procedures.* The risk management controls and supervisory procedures shall be reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of mar-

ket access, including being reasonably designed to:

(i) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and

(ii) Prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

(2) *Regulatory risk management controls and supervisory procedures.* The risk management controls and supervisory procedures shall be reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to:

(i) Prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis;

(ii) Prevent the entry of orders for securities for a broker or dealer, customer, or other person if such person is restricted from trading those securities;

(iii) Restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker or dealer; and

(iv) Assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access.

(d) The financial and regulatory risk management controls and supervisory procedures described in paragraph (c) of this section shall be under the direct and exclusive control of the broker or dealer that is subject to paragraph (b) of this section.

(1) Notwithstanding the foregoing, a broker or dealer that is subject to paragraph (b) of this section may reasonably allocate, by written contract, after a thorough due diligence review, control over specific regulatory risk management controls and supervisory procedures described in paragraph (c)(2) of this section to a customer that

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is a registered broker or dealer, provided that such broker or dealer subject to paragraph (b) of this section has a reasonable basis for determining that such customer, based on its position in the transaction and relationship with an ultimate customer, has better access than the broker or dealer to that ultimate customer and its trading information such that it can more effectively implement the specified controls or procedures.

(2) Any allocation of control pursuant to paragraph (d)(1) of this section shall not relieve a broker or dealer that is subject to paragraph (b) of this section from any obligation under this section, including the overall responsibility to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access.

(e) A broker or dealer that is subject to paragraph (b) of this section shall establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by paragraphs (b) and (c) of this section and for promptly addressing any issues.

(1) Among other things, the broker or dealer shall review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. Such review shall be conducted in accordance with written procedures and shall be documented. The broker or dealer shall preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with § 240.17a-4(e)(7) and § 240.17a-4(b), respectively.

(2) The Chief Executive Officer (or equivalent officer) of the broker or dealer shall, on an annual basis, certify that such risk management controls and supervisory procedures comply with paragraphs (b) and (c) of this section, and that the broker or dealer conducted such review, and such certifications shall be preserved by the broker or dealer as part of its books

and records in a manner consistent with § 240.17a-4(b).

(f) The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer, if the Commission determines that such exemption is necessary or appropriate in the public interest consistent with the protection of investors.

[75 FR 69825, Nov. 15, 2010]

§ 240.15c6-1 Settlement cycle.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided